

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

MICHAEL DANIEL BOWMAN,

Plaintiff,

v.

Civ. Action No. 1:19-CV-172
(Kleeh)

MARK D. PANEPINTO,

Defendant.

MEMORANDUM OPINION AND ORDER ADOPTING REPORT AND RECOMMENDATION
[ECF NO. 14] AND DISMISSING COMPLAINT WITH PREJUDICE

Pending before the Court is a Report and Recommendation ("R&R") by United States Magistrate Judge Michael J. Aloï. The R&R recommends that the Court dismiss Plaintiff's Complaint with prejudice and deny as moot the pending Motion of Joinder. For the reasons discussed herein, the Court adopts the R&R.

I. BACKGROUND AND PROCEDURAL HISTORY

On September 6, 2019, the Plaintiff, Michael Daniel Bowman ("Plaintiff"), filed a civil rights claim pursuant to 42 U.S.C. § 1983. He alleges that the Defendant, Mark D. Panepinto ("Defendant"), who served as Plaintiff's counsel during his underlying criminal prosecution, conspired with prosecutors to conceal the fact that someone other than the grand jury foreperson signed the indictments. The Magistrate Judge granted Plaintiff leave to proceed in forma pauperis. Plaintiff then

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filed a Motion of Joinder, asking the Court to joint this action with Case No. 1:19-CV-255.

II. THE R&R

In the R&R, the Magistrate Judge recommended that the Court find the Complaint frivolous and dismiss it with prejudice. He therefore recommended that the Court deny as moot the Motion of Joinder. The Magistrate Judge also warned Plaintiff about the "Three Strikes Rule" and the possibility of future sanctions.

The Magistrate Judge informed Plaintiff that he had fourteen (14) days from the date of service of the R&R to file "specific written objections, identifying the portions of the Report and Recommendation to which objection is made, and the basis of such objection." Plaintiff was further warned that the "[f]ailure to file written objections . . . shall constitute a waiver of de novo review by the District Court and a waiver of appellate review by the Circuit Court of Appeals." Plaintiff timely filed an objection on October 30, 2019.

III. STANDARD OF REVIEW

When reviewing a magistrate judge's R&R, the Court must review de novo only the portions to which an objection has been timely made. 28 U.S.C. § 636(b)(1)(C). Otherwise, "the Court may adopt, without explanation, any of the magistrate judge's recommendations" to which there are no objections.

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Dellarcirprete v. Gutierrez, 479 F. Supp. 2d 600, 603-04 (N.D.W. Va. 2007) (citing Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983)). Courts will uphold portions of a recommendation to which no objection has been made unless they are clearly erroneous. See Diamond v. Colonial Life & Accident Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005).

IV. DISCUSSION

Plaintiff made only one objection to the R&R. He asks the Court to dismiss the Complaint without prejudice, as opposed to with prejudice. The Court overrules this objection. "The question with respect to a dismissal with prejudice is often whether 'it appears that frivolous factual allegations could be remedied through a more specific pleading.'" Adams v. Rice, 40 F.3d 72, 75 (1994) (footnote). The Court here finds that Plaintiff's claims are frivolous as a matter of law under Heck v. Humphrey, 512 U.S. 477, 486-87 (1994), and cannot be remedied through more specific pleading. See Adams, 40 F.3d at 75 (footnote) (writing that because claims were "frivolous as a matter of law, the district court was entitled to believe that they could not be remedied through more specific pleading").

Plaintiff has not objected to the Magistrate Judge's finding that his Complaint is frivolous. After careful review of the remainder of the R&R, to which Plaintiff did not object, the

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Court finds no clear error. The Court agrees that Plaintiff's Complaint is frivolous and agrees with the Magistrate Judge that it should be denied with prejudice.

V. CONCLUSION

For the reasons discussed above, the Court **ADOPTS** the R&R [ECF No. 14] and **DENIES AS MOOT** the Motion of Joinder [ECF No. 11]. This action is **DISMISSED WITH PREJUDICE** and **STRICKEN** from the Court's active docket.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Memorandum Opinion and Order to the pro se Plaintiff, via certified mail, return receipt requested, and to file a separate entry of judgment.

DATED: May 11, 2020

/s/ Thomas S. Kleeh
THOMAS S. KLEEH
UNITED STATES DISTRICT JUDGE